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protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States will be entitled to recover any and all administrative and legal costs from the participating eligible entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. The CCC's share will be in proportion to its percentage of original investment.

(f) In the event NRCS determines it must exercise its rights identified under a conservation easement or other interest in land, NRCS will provide written notice by certified mail, return receipt requested, to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the noncompliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

§ 1491.31 Appeals.

(a) A person or eligible entity which has submitted an FRPP proposal and is therefore participating in FRPP, may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person or eligible entity may seek judicial review of any administrative action taken under this part, the person or eligible entity must exhaust all administrative appeal procedures set forth in paragraph (a) of this

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section, and for the purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these provisions.

(c) Enforcement action undertaken by NRCS in furtherance of its vested property rights are under the jurisdiction of the Federal District Court and not subject to review under administrative appeal regulations.

§ 1491.32 Scheme or device.

(a) If it is determined by NRCS that a eligible entity has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such an eligible entity during the applicable period may be withheld or be required to be refunded, with interest, as determined appropriate by NRCS on behalf of the CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, and depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

PART 1492 [RESERVED]

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

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AUTHORITY: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

SOURCE: 59 FR 52876, Oct. 19, 1994, unless otherwise noted.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

SOURCE: 79 FR 68595, Nov. 18, 2014, unless otherwise noted.

§ 1493.1 General statement.

This subpart sets forth the restrictions that apply to the issuance and use of Payment Guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee (GSM-102) Program and Facility Guarantee Program (FGP), the criteria considered by CCC in determining the annual allocations of Payment Guarantees to be made available with respect to each participating country and region, and the criteria considered by CCC in the review and approval of proposed allocation levels for specific U.S. Agricultural Commodities to these countries and regions.

§ 1493.2 Purposes of programs.

CCC is authorized to issue Payment Guarantees:

(a) To increase exports of U.S. Agricultural Commodities and expand access to trade finance;

(b) To assist countries, particularly developing countries and emerging markets, in meeting their food and fiber needs;

(c) To establish or improve facilities and infrastructure in emerging markets to expand exports of U.S. Agricultural Commodities; or

(d) For such other purposes as the Secretary of Agriculture determines appropriate.

§ 1493.3 Restrictions on programs and cargo preference statement.

(a) *Restrictions on use of Payment Guarantees.* (1) Payment Guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make Payment Guarantees available in connection

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with sales of U.S. Agricultural Commodities to any country that the Secretary determines cannot adequately service the debt associated with such sale.

(3) CCC shall not make Payment Guarantees available in connection with sales of U.S. Agricultural Commodities financed by any Foreign Financial Institution that CCC determines cannot adequately service the debt associated with such sale.

(b) *Cargo preference laws.* The provisions of the cargo preference laws do not apply to export sales with respect to which Payment Guarantees are issued under these programs.

§ 1493.4 Criteria for country and regional allocations.

The criteria considered by CCC in reviewing proposals for country and regional allocations will include, but not be limited to, the following:

(a) Potential benefits that the extension of Payment Guarantees would provide for the development, expansion, or maintenance of the market for particular U.S. Agricultural Commodities in the importing country;

(b) Financial and economic ability and/or willingness of the country of obligation to adequately service CCC guaranteed debt (“country of obligation” is the country whose Foreign Financial Institution obligation is guaranteed by CCC);

(c) Financial status of participating Foreign Financial Institutions in the country of obligation as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the country of obligation as it would affect its ability and/or willingness to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the country of obligation or by the participating Foreign Financial Institutions to CCC or to lenders protected by CCC’s Payment Guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

The criteria considered by CCC in determining U.S. Agricultural Commodity allocations within a specific country or regional allocation will in-

clude, but not be limited to, the following:

(a) Potential benefits that the extension of Payment Guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. Agricultural Commodity under consideration;

(b) The best use to be made of the Payment Guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country; and

(c) Evaluation, in terms of program purposes, of the relative benefits of providing Payment Guarantee coverage for sales of the U.S. Agricultural Commodity under consideration compared to providing coverage for sales of other U.S. Agricultural Commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM-102) Operations

SOURCE: 79 FR 68596, Nov. 18, 2014, unless otherwise noted.

§ 1493.10 General statement.

(a) *Overview.* The Export Credit Guarantee (GSM-102) Program of the Commodity Credit Corporation (CCC) was developed to expand U.S. Agricultural Commodity exports by making available Payment Guarantees to encourage U.S. private sector financing of foreign purchases of U.S. Agricultural Commodities on credit terms. The Payment Guarantee issued under GSM-102 is an agreement by CCC to pay the Exporter, or the U.S. Financial Institution that may take assignment of the Payment Guarantee, specified amounts of principal and interest in case of default by the Foreign Financial Institution that issued the Letter of Credit for the export sale covered by the Payment Guarantee. Under the GSM-102 program, maximum repayment terms may vary based on risk of default, as determined by CCC. The program operates in a manner intended not to interfere with markets for cash sales and is targeted toward those countries that have sufficient financial strength so that

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foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. Agricultural Commodities.

(b) *Program administration.* The GSM-102 program is administered under the direction of the General Sales Manager and Vice President of CCC, pursuant to this subpart, subpart A, and any Program Announcements issued by CCC. From time to time, CCC may issue a notice to participants on the USDA Web site to remind participants of the requirements of the GSM-102 program or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A. Program information, such as eligible U.S. Agricultural Commodities and approved U.S. and Foreign Financial Institutions, is available on the USDA Web site.

(c) *Country and regional program announcements.* From time to time, CCC will issue a Program Announcement on the USDA Web site to announce a GSM-102 program for a specific country or region. The Program Announcement for a country or region will designate specific U.S. Agricultural Commodities or products thereof, or designate that all eligible U.S. Agricultural Commodities are available under the announcement. The Program Announcement will contain any requirements applicable to that country or region as determined by CCC.

§ 1493.20 Definition of terms.

Terms set forth in this subpart, on the USDA Web site (including in Program Announcements and notices to participants), and in any CCC-originated documents pertaining to the GSM-102 Program will have the following meanings:

Affiliate. Entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Control may include, but is not limited to: Interlocking management or ownership; identity of interests among family members; shared facilities and

equipment; or common use of employees.

Assignee. A U.S. Financial Institution that has obtained the legal right to make a claim and receive the payment of proceeds under the Payment Guarantee.

Business Day. A day during which employees of the U.S. Department of Agriculture in the Washington, DC metropolitan area are on official duty during normal business hours.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq).

CCC Late Interest. Interest payable by CCC pursuant to § 1493.180(c).

Cost and Freight (CFR). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Cost Insurance and Freight (CIF). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Date of Export. One of the following dates, depending upon the method of shipment: The on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

Date of Sale. The earliest date on which a Firm Export Sales Contract exists between the Exporter, or an Intervening Purchaser, if applicable, and the Importer.

Director. The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or the Director's designee.

Discounts and Allowances. Any consideration provided directly or indirectly, by or on behalf of the Exporter or an Intervening Purchaser, to the Importer in connection with an Eligible Export Sale, above and beyond the commodity's value, stated on the appropriate FOB, FAS, FCA, CFR or CIF basis (or

other basis specified in Incoterms 2010, or as superseded), which includes, but is not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the Importer requires the Exporter to employ and compensate a specified agent as a condition of concluding the Eligible Export Sale; the whole or partial release of the Importer from any financial or contractual obligations; or settlements made in favor of the Importer for quality or weight.

Eligible Export Sale. An export sale of U.S. Agricultural Commodities in which the obligation of payment for the portion registered under the GSM-102 program arises solely and exclusively from a Foreign Financial Institution Letter of Credit or Terms and Conditions Document issued in connection with a Payment Guarantee.

Eligible Interest. The amount of interest that CCC agrees to pay the Holder of the Payment Guarantee in the event that CCC pays a claim for default of Ordinary Interest. Eligible Interest shall be the lesser of:

(1) The amount calculated using the interest rate specified between the Holder of the Payment Guarantee and the Foreign Financial Institution; or

(2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the Payment Guarantee.

Exported Value. (1) Where CCC announces Payment Guarantee coverage on a FAS, FCA, or FOB basis and:

(i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or

(ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS, FCA or FOB, port of shipment, is measured by the CFR or CIF value of the U.S. Agricultural Commodity less the cost of ocean freight, as determined at the time of applica-

tion and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the U.S. Agricultural Commodity is sold on a CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity; or

(3) When a CFR or CIF U.S. Agricultural Commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the Exported Value.

Exporter. A seller of U.S. Agricultural Commodities that is both qualified in accordance with the provisions of §1493.30 and the applicant for the Payment Guarantee.

Firm Export Sales Contract. The written sales contract entered into between the Exporter and the Importer (or, if applicable, the written sales contracts between the Exporter and the Intervening Purchaser and the Intervening Purchaser and the Importer) which sets forth the terms and conditions of an Eligible Export Sale of the eligible U.S. Agricultural Commodity from the Exporter to the Importer (or, if applicable, the sale of the eligible U.S. Agricultural Commodity from the Exporter to the Intervening Purchaser and from the Intervening Purchaser to the Importer). Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the GSM-102 program must, at a minimum, document the following information: The eligible U.S. Agricultural Commodity,

quantity, quality specifications, delivery terms (FOB, C&F, FCA, etc.) to the eligible country or region, delivery period, unit price, payment terms, Date of Sale, and evidence of agreement between Importer (and Intervening Purchaser, if applicable) and Exporter. The Firm Export Sales Contract between the Exporter and the Importer (or, if applicable, between the Exporter and the Intervening Purchaser and between the Intervening Purchaser and the Importer) may be conditioned upon CCC's approval of the Exporter's application for a Payment Guarantee.

Foreign Financial Institution. A financial institution (including foreign branches of U.S. financial institutions):

(1) Organized and licensed under the laws of a jurisdiction outside the United States;

(2) Not domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction (except for multilateral and sovereign institutions).

Foreign Financial Institution Letter of Credit or Letter of Credit. An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices (UCP) for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), and, if electronic documents are to be utilized, the current revision of the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP) providing for payment in U.S. dollars against stipulated documents and issued in favor of the Exporter by a CCC-approved Foreign Financial Institution.

Free Alongside Ship (FAS). A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Free Carrier (FCA). A customary trade term for all modes of transportation, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

Free on Board (FOB). A customary trade term for sea and inland waterway transport only, as defined by the Inter-

national Chamber of Commerce, Incoterms 2010 (or as superseded).

GSM. The General Sales Manager, Foreign Agricultural Service, USDA, acting in his or her capacity as Vice President, CCC, or designee.

Guaranteed Value. The maximum amount indicated on the face of the Payment Guarantee, exclusive of interest, that CCC agrees to pay the Holder of the Payment Guarantee.

Holder of the Payment Guarantee. The Exporter or the Assignee of the Payment Guarantee with the legal right to make a claim and receive the payment of proceeds from CCC under the Payment Guarantee in case of default by the Foreign Financial Institution.

Importer. A foreign buyer that enters into a Firm Export Sales Contract with an Exporter or with an Intervening Purchaser for the sale of the U.S. Agricultural Commodities to be shipped from the United States to the destination country or region under the Payment Guarantee.

Importer's Representative. An entity having a physical office and that is either organized under the laws of or registered to do business in the destination country or region specified in the Payment Guarantee and that is authorized to act on the Importer's behalf with respect to the sale described in the Firm Export Sales Contract.

Incoterms. Trade terms developed by the International Chamber of Commerce in Incoterms 2010 (or latest revision) which define the respective obligations of the buyer and seller in a sales contract.

Intervening Purchaser. A party that is not located in the country or region of destination specified in the Payment Guarantee and that enters into a Firm Export Sales Contract to purchase U.S. Agricultural Commodities from an Exporter and sell the same U.S. Agricultural Commodities to an Importer.

Ordinary Interest. Interest (other than Post Default Interest) charged on the principal amount identified in the Foreign Financial Institution Letter of Credit or, if applicable, the Terms and Conditions Document.

Payment Guarantee. An agreement under the GSM-102 program by which CCC, in consideration of a fee paid, and in reliance upon the statements and

declarations of the Exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements, agrees to pay the Holder of the Payment Guarantee in the event of a default by a Foreign Financial Institution on its Repayment Obligation under the Foreign Financial Institution Letter of Credit issued in connection with a guaranteed sale or, if applicable, under the Terms and Conditions Document.

Port Value. (1) Where CCC announces coverage on a FAS, FCA, or FOB basis and:

(i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, port of shipment, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or

(ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, port of destination, the value of the export sale, FAS, FCA, or FOB, port of shipment, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, is measured by the CFR or CIF value of the U.S. Agricultural Commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

(2) Where CCC announces coverage on a CFR or CIF basis and where the U.S. Agricultural Commodity was sold on CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

(3) When a CFR or CIF U.S. Agricultural Commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging

bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the Port Value.

Post Default Interest. Interest charged on amounts in default that begins to accrue upon default of payment, as specified in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document.

Principal. A principal of a corporation or other legal entity is an individual serving as an officer, director, owner, partner, or other individual with management or supervisory responsibilities for such corporation or legal entity.

Program Announcement. An announcement issued by CCC on the USDA Web site that provides information on specific country and regional programs and may identify eligible U.S. Agricultural Commodities and countries, length of credit periods which may be covered, and other information.

Repayment Obligation. A contractual commitment by the Foreign Financial Institution issuing the Letter of Credit in connection with an Eligible Export Sale to make payment(s) on principal amount(s), plus any Ordinary Interest and Post Default Interest, in U.S. dollars, to an Exporter or U.S. Financial Institution on deferred payment terms consistent with those permitted under CCC's Payment Guarantee. The Repayment Obligation must be documented using one of the methods specified in §1493.90.

Repurchase Agreement. A written agreement under which the Holder of the Payment Guarantee may from time to time enter into transactions in which the Holder of the Payment Guarantee agrees to sell to another party Foreign Financial Institution Letter(s) of Credit and, if applicable, Terms and Conditions Document(s), secured by the Payment Guarantee, and repurchase the same Foreign Financial Institution Letter(s) of Credit and Terms and Conditions Documents secured by the Payment Guarantee, on demand or date certain at an agreed upon price.

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SAM (System for Award Management). A Federal Government owned and operated free Web site that contains information on parties excluded from receiving Federal contracts or certain subcontracts and excluded from certain types of Federal financial and non-financial assistance and benefits.

Terms and Conditions Document. A document specifically identified and referred to in the Foreign Financial Institution Letter of Credit which may contain the Repayment Obligation and other special requirements specified in § 1493.90.

United States or U.S. Each of the States of the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

U.S. Agricultural Commodity or U.S. Agricultural Commodities. (1)(i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity—

(A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(B) That the Secretary determines to be a high value agricultural product.

(2) For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

USDA. United States Department of Agriculture.

U.S. Financial Institution. A financial institution (including U.S. branches of Foreign Financial Institutions):

(1) Organized and licensed under the laws of a jurisdiction within the United States;

(2) Domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

Weighted Average Export Date. The mean Date of Export for all exports within a 30 calendar day period, weighted by the guaranteed portion of the Exported Value of each export.

§ 1493.30 Information required for Exporter participation.

Exporters must apply and be approved by CCC to be eligible to participate in the GSM-102 Program.

(a) *Qualification requirements.* To qualify for participation in the GSM-102 program, an applicant must submit the following information to CCC in the manner specified on the USDA Web site:

(1) For the applicant:

(i) The name and full U.S. address (including the full 9-digit zip code) of the applicant's office, along with an indication of whether the address is a business or private residence. A post office box is not an acceptable address. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the GSM-102 export sales contemplated by the applicant;

(ii) Dun and Bradstreet (DUNS) number;

(iii) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(iv) Telephone and fax numbers;

(v) Email address (if applicable);

(vi) Business Web site (if applicable);

(vii) Contact name;

(viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and

(ix) The form of business entity of the applicant (e.g., sole proprietorship, partnership, corporation, etc.) and the U.S. jurisdiction under which such entity is organized and authorized to conduct business. Such jurisdictions are a U.S. State, the District of Columbia, Puerto Rico, and the territories and possessions of the United States. Upon request by CCC, the applicant must provide written evidence that such entity has been organized in a U.S. State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

(2) For the applicant's headquarters office:

(i) The name and full address of the applicant's headquarters office. A post office box is not an acceptable address; and

(ii) Telephone and fax numbers.

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(3) For the applicant's agent for the service of process:

- (i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;
- (ii) Telephone and fax numbers;
- (iii) Email address (if applicable); and
- (iv) Contact name.

(4) A description of the applicant's business. Applicants must provide the following information:

(i) Nature of the applicant's business (e.g., agricultural producer, commodity trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history with U.S. Agricultural Commodities for the preceding three years, including a description of such commodities;

(iii) Explanation of the applicant's experience/history exporting U.S. Agricultural Commodities, including number of years involved in exporting, types of products exported, and destination of exports for the preceding three years; and

(iv) Whether or not the applicant is a "small or medium enterprise" (SME) as defined on the USDA Web site;

(5) A listing of any related companies (e.g., Affiliates, subsidiaries, or companies otherwise related through common ownership) currently qualified to participate in CCC export programs;

(6) A statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(7) A statement that: "All certifications set forth in 7 CFR 1493.60(a) are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be

given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any Exporter not submitting an application to CCC for a Payment Guarantee for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in § 1493.30(a) to CCC to participate in the GSM-102 program. If at any time the information required by paragraph (a) of this section changes, the Exporter must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM-102 program if such applicant cannot provide all of the information and certifications required by paragraph (a) of this section.

§ 1493.40 Information required for U.S. Financial Institution participation.

U.S. Financial Institutions must apply and be approved by CCC to be eligible to participate in the GSM-102 Program.

(a) *Qualification requirements.* To qualify for participation in the GSM-102 Program, a U.S. Financial Institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Dun and Bradstreet (DUNS) number;

(3) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(4) Year-end audited financial statements for the applicant's most recent fiscal year;

(5) Breakdown of the applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(6) Organizational structure (independent, or a subsidiary, Affiliate, or

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branch of another financial institution);

(7) Documentation from the applicable United States Federal or State agency demonstrating that the applicant is either licensed or chartered to do business in the United States;

(8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and

(9) A statement that: "All certifications set forth in 7 CFR 1493.60 are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.60. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any U.S. Financial Institution not participating in the GSM-102 program for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in paragraph (a) of this section to CCC to participate in the GSM-102 program. If at any time the information required by paragraph (a) of this section changes, the U.S. Financial Institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.

(d) *Ineligibility for program participation.* A U.S. Financial Institution may be deemed ineligible to participate in the GSM-102 Program if such applicant cannot provide all of the information and certifications required by paragraph (a) of this section.

§ 1493.50 Information required for Foreign Financial Institution participation.

Foreign Financial Institutions must apply and be approved by CCC to be eligible to participate in the GSM-102 Program.

(a) *Qualification requirements.* To qualify for participation in the GSM-102 program, a Foreign Financial Institution must submit the following information to CCC in the manner specified on the USDA Web site:

(1) Legal name and address of the applicant;

(2) Year end, audited financial statements in accordance with the accounting standards established by the applicant's regulators, in English, for the applicant's three most recent fiscal years. If the applicant is not subject to a banking or other financial regulatory authority, year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's three most recent fiscal years;

(3) Breakdown of applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(4) Organizational structure (independent, or a subsidiary, Affiliate, or branch of another legal entity);

(5) Name of foreign government agency that regulates the applicant; and

(6) A statement that: "All certifications set forth in 7 CFR 1493.60 are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in §1493.60. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further

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information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Participation limit.* If, after review of the information submitted and other publicly available information, CCC determines that the Foreign Financial Institution is eligible for participation, CCC will establish a dollar participation limit for the institution. This limit will be the maximum amount of exposure CCC agrees to undertake with respect to this Foreign Financial Institution at any point in time. CCC may change or cancel this dollar participation limit at any time based on any information submitted or any publicly available information.

(d) *Previous qualification and submission of annual financial statements.* Each qualified Foreign Financial Institution shall submit annually to CCC the certifications in §1493.60 and its audited fiscal year-end financial statements in accordance with the accounting standards established by the applicant's regulators, in English, so that CCC may determine the continued ability of the Foreign Financial Institution to adequately service CCC guaranteed debt. If the Foreign Financial Institution is not subject to a banking or other financial regulatory authority, it should submit year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's most recent fiscal year. Failure to submit this information annually may cause CCC to decrease or cancel the Foreign Financial Institution's dollar participation limit. Any Foreign Financial Institution not participating in the GSM-102 program for two consecutive U.S. Government fiscal years may have its dollar participation limit cancelled. If this participation limit is cancelled, the Foreign Financial Institution must resubmit the information and certifications requested in paragraph (a) of this section to CCC when reapplying for participation. Additionally, if at any time the information required by paragraph (a) of this section changes, the Foreign Financial Institution must promptly contact CCC to update this information and certify that the re-

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mainder of the information previously provided under paragraph (a) has not changed.

(e) *Ineligibility for program participation.* A Foreign Financial Institution may be deemed ineligible to participate in the GSM-102 program if:

(1) Such applicant cannot provide all of the information and certifications required in paragraph (a) of this section; or

(2) Based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the Payment Guarantees issued by CCC.

§ 1493.60 Certifications required for program participation.

(a) When making the statement required by §§1493.30(a)(7), 1493.40(a)(9), or 1493.50(a)(6), each Exporter, U.S. Financial Institution and Foreign Financial Institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

(5) The applicant does not have any outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13;

(6) The applicant is not controlled by a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (e.g., a corporation is not controlled by an officer, director, or shareholder who owes a debt); and

(7) The applicant does not control a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (e.g., a corporation does not control a wholly-owned or partially-owned subsidiary which owes a debt).

(b) *Additional certifications for U.S. and Foreign Financial Institution applicants.* When making the statement required by §1493.40(a)(9) or §1493.50(a)(6), each U.S. and Foreign Financial Institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and its Principals are in compliance with all requirements, restrictions and guidelines as established by the applicant's regulators; and

(2) All U.S. operations of the applicant and its U.S. Principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001, and the Foreign Corrupt Practices Act of 1977.

§ 1493.70 Application for Payment Guarantee.

(a) A Firm Export Sales Contract for an Eligible Export Sale must exist before an Exporter may submit an application for a Payment Guarantee. Upon request by CCC, the Exporter must provide evidence of a Firm Export Sales Contract. An application for a Pay-

ment Guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site. An application must identify the name and address of the Exporter and include the following information:

(1) Name of the destination country or region. If the destination is a region, indicate the country or countries within the region to which the U.S. Agricultural Commodity will be exported.

(2) Name and address of the Importer. If the Importer is not physically located in the country or region of destination, it must have an Importer's Representative in the country or region of destination. If applicable, provide the name and address of the Importer's Representative.

(3) A statement that the U.S. Agricultural Commodity will be shipped to the destination country or region.

(4) Name and address of the party on whose request the Letter of Credit is issued, if other than the Importer.

(5) Name and address of the Intervening Purchaser, if any.

(6) Date of Sale.

(7) Exporter's sale number.

(8) Delivery period as agreed between the Exporter and the Importer.

(9) A full description of the U.S. Agricultural Commodity (including packaging, if any). The description must include the applicable six-digit Harmonized System commodity classification code. The commodity grade and quality specified in the Exporter's application for the Payment Guarantee must correspond with the commodity grade and quality specified in the Firm Export Sales Contract and the Foreign Financial Institution Letter of Credit.

(10) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted.

(11) Unit sales price of the U.S. Agricultural Commodity, or a mechanism to establish the price, as agreed between the Exporter and the Importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.

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(12) Description and value of Discounts and Allowances, if any.

(13) Port Value (includes upward loading tolerance, if any).

(14) Guaranteed Value.

(15) Guarantee fee, either as announced on the Web site per §1493.110(a)(1), or the competitive fee bid per §1493.110(a)(2), depending on the type of fee charged by CCC for the country or region.

(16) Name and location of the Foreign Financial Institution issuing the Letter of Credit and, upon request by CCC, written evidence that the Foreign Financial Institution has agreed to issue the Letter of Credit.

(17) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.

(18) The Exporter's statement, "All certifications set forth in 7 CFR 1493.80 are hereby being made by the Exporter in this application." which, when included in the application by the Exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.80.

(b) An application for a Payment Guarantee may be approved as submitted, approved with modifications agreed to by the Exporter, or rejected by the Director. In the event that the application is approved, the Director will cause a Payment Guarantee to be issued in favor of the Exporter. Such Payment Guarantee will become effective at the time specified in §1493.100(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.80 Certification requirements for obtaining Payment Guarantee.

By providing the statement in §1493.70(a)(18), the Exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been met. The Exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. If the Exporter

makes false certifications with respect to a Payment Guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke guarantee coverage for any commodities not yet exported and/or to commence legal action and/or administrative proceedings against the Exporter. The Exporter, in submitting an application for a Payment Guarantee and providing the statement set forth in §1493.70(a)(18), certifies that:

(a) The commodity or product covered by the Payment Guarantee is a U.S. Agricultural Commodity;

(b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the U.S. Agricultural Commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) At the time of submission of the application for Payment Guarantee, neither the Importer nor the Intervening Purchaser, if applicable, is present as an excluded party on the SAM list;

(e) The Exporter is fully in compliance with the requirements of §1493.130(b) for all existing Payment Guarantees issued to the Exporter or has requested and been granted an extension per §1493.130(b)(3); and

(f) The information provided pursuant to §1493.30 has not changed and the Exporter still meets all of the qualification requirements of §1493.30.

§ 1493.90 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable.

(a) *Permitted mechanisms to document special requirements.* (1) A Foreign Financial Institution Letter of Credit is required in connection with the export sale to which CCC's Payment Guarantee pertains.

(i) The Letter of Credit must stipulate presentation of at least one original clean on board bill of lading as a required document, unless:

(A) The Exporter, or a related company previously reported to CCC by the Exporter pursuant to § 1493.30(a)(5), is named as the shipper on the clean on board bill of lading. If the Exporter or a related company is named the shipper on the bill of lading, the Letter of Credit may stipulate a copy or photocopy of an original clean on board bill of lading; or

(B) The Letter of Credit stipulates presentation of electronic documents per paragraph (a)(1)(ii) of this section.

(ii) If the Letter of Credit will allow for presentation of electronic documents, the Letter of Credit must so stipulate.

(2) The use of a Terms and Conditions Document is optional. The Terms and Conditions Document, if any, must be specifically identified and referred to in the Foreign Financial Institution Letter of Credit.

(3) The special requirements in paragraph (b) of this section must be documented in one of the two following ways:

(i) The special requirements may be set forth in the Foreign Financial Institution Letter of Credit as a special instruction from the Foreign Financial Institution; or

(ii) The special requirements may be set forth in a separate Terms and Conditions Document.

(b) *Special requirements.* The following provisions are required and must be documented in accordance with paragraph (a) of this section:

(1) The terms of the Repayment Obligation, including a specific promise by the Foreign Financial Institution issuing the Letter of Credit to pay the Repayment Obligation;

(2) The following language: "In the event that the Commodity Credit Corporation ("CCC") is subrogated to the position of the obligee hereunder, this instrument shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws principles. In such case, any legal action or proceeding arising under this instrument will be brought exclusively in the U.S. District Court for the Southern District of New York or the U.S. District Court for the District of Columbia, as determined by CCC, and such parties hereby irrevocably consent to the personal jurisdiction and venue therein.";

(3) A provision permitting the Holder of the Payment Guarantee to declare all or any part of the Repayment Obligation, including accrued interest, immediately due and payable, in the event a payment default occurs under the Letter of Credit or, if applicable, the Terms and Conditions Document; and

(4) Post Default Interest terms.

§ 1493.100 Terms and requirements of the Payment Guarantee.

(a) *CCC's obligation.* The Payment Guarantee will provide that CCC agrees to pay the Holder of the Payment Guarantee an amount not to exceed the Guaranteed Value, plus Eligible Interest, in the event that the Foreign Financial Institution fails to pay under the Foreign Financial Institution Letter of Credit and, if applicable, the Terms and Conditions Document. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* (1) The Holder of the Payment Guarantee may, with respect to a series of shipments made within a 30 calendar day period, elect to have the Payment Guarantee coverage being on the Weighted Average Export Date for such shipments. The first allowable 30 calendar day period for bundling of shipments to compute the Weighted Average Export Date for such shipments begins on the first Date of Export for transactions covered by the Payment Guarantee. Shipments within each subsequent 30 calendar day period may be bundled with other shipments made within the same 30 calendar period to

determine the Weighted Average Export Date for such shipments.

(2)(i) The period of coverage under the Payment Guarantee begins on the earlier of the following dates and will continue during the credit term specified on the Payment Guarantee or any amendments thereto:

(A) The Date(s) of Export or the Weighted Average Export Date(s), as selected by the Holder of the Payment Guarantee consistent with paragraph (b)(1) of this section; or

(B) The date when Ordinary Interest begins to accrue, or the weighted average date when interest begins to accrue.

(ii) However, the Payment Guarantee becomes effective on the Date(s) of Export of the U.S. Agricultural Commodities specified in the Exporter's application for the Payment Guarantee.

(c) *Terms of the CCC Payment Guarantee.* The terms of CCC's coverage will be set forth in the Payment Guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and notices to participants in effect at the time the Payment Guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the Payment Guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The Exporter may apply for a Payment Guarantee and, if coverage is available, pay the guarantee fee, based on the mean of the lower and upper loading tolerances of the Firm Export Sales Contract; however, the Exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the Firm Export Sales Contract. The amount of coverage that can be reserved to accommodate the upward loading tolerance is limited to ten (10) percent of the Port Value of the sale. If such additional guarantee coverage is available at the time of application and the Director determines to make such reservation, CCC will so indicate to the Exporter. In the event that the Exporter ships a quantity greater than the amount on which the guarantee fee

was paid (i.e., the mean of the upper and lower loading tolerances), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an application for amendment to the Payment Guarantee, and by paying the additional amount of fee applicable. If such application for an amendment to the Payment Guarantee is not filed with CCC by the Exporter and the additional fee not received by CCC within 30 calendar days after the date of the last export against the Payment Guarantee, CCC may cancel the reserve coverage originally set aside for the Exporter.

(f) *Certain export sales are ineligible for GSM-102 Payment Guarantees.* (1) An export sale (or any portion thereof) is ineligible for Payment Guarantee coverage if at any time CCC determines that:

(1) The commodity is not a U.S. Agricultural Commodity;

(2) The export sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the export sale;

(3) The export sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(4) If the U.S. Agricultural Commodity is vegetable oil or a vegetable oil product, any of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(5) Either the Importer or the Intervening Purchaser, if any, is excluded or disqualified from participation in U.S. government programs; or

(6) The sale is not an Eligible Export Sale.

(g) *Certain exports of U.S. Agricultural Commodities are ineligible for Payment Guarantee coverage.* The following exports are ineligible for coverage under a GSM-102 Payment Guarantee except where it is determined by the Director

to be in the best interest of CCC to provide guarantee coverage on such exports:

(1) Exports of U.S. Agricultural Commodities with a Date of Export prior to the date of receipt by CCC of the Exporter's written application for a Payment Guarantee;

(2) Exports of U.S. Agricultural Commodities with a Date of Export later than the final date to export shown on the Payment Guarantee or any amendments thereof;

(3) Exports of U.S. Agricultural Commodities where the date of issuance of a Foreign Financial Institution Letter of Credit is later than 30 calendar days after:

(i) The Date of Export, or

(ii) The Weighted Average Export Date, if the Holder of the Payment Guarantee has elected to have the Payment Guarantee coverage begin on the Weighted Average Export Date; or

(4) Exports of U.S. Agricultural Commodities that have been guaranteed by CCC under another Payment Guarantee. If CCC determines that an export of U.S. Agricultural Commodities has been guaranteed under multiple Payment Guarantees (or coverage has been requested under multiple Payment Guarantees), CCC will determine which Payment Guarantee (or application for Payment Guarantee), if any, corresponds to an Eligible Export Sale.

(h) *Additional requirements.* The Payment Guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the Director. Such additional terms, conditions or qualifications as stated in the Payment Guarantee are binding on the Exporter and the Assignee.

(i) *Amendments.* A request for an amendment of a Payment Guarantee may be submitted only by the Exporter, with the written concurrence of the Assignee, if any. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and sufficient budget authority exists. Any amendment to the Payment Guarantee, particularly those that result in an increase in CCC's liability under the Payment Guarantee, may result in an increase in the guarantee fee. CCC re-

serves the right to request additional information from the Exporter to justify the request and to charge a fee for amendments. Such fees will be announced and available on the USDA Web site. Any request to amend the Foreign Financial Institution on the Payment Guarantee will require that the Holder of the Payment Guarantee resubmit to CCC the certifications in § 1493.120(c)(1)(i) or § 1493.140(d).

§ 1493.110 Guarantee fees.

(a) *Guarantee fee rates.* Payment Guarantee fee rates charged may be one of the following two types:

(1) Those that are announced on the USDA Web site and are based upon the length of the payment terms provided for in the Firm Export Sales Contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration.

(2) Those where Exporters are invited to submit a competitive bid for coverage. If CCC determines to offer coverage on a competitive fee bid basis, instructions for bidding, and minimum fee rates, if applicable, will be made available on the USDA Web site.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the Guaranteed Value by the guarantee fee rate.

(c) *Payment of fee.* The Exporter shall remit, with his application, the full amount of the guarantee fee. Applications will not be accepted until the guarantee fee has been received by CCC. The Exporter's wire transfer or check for the guarantee fee shall be made payable to CCC and be submitted in the manner specified on the USDA Web site.

(d) *Refunds of fee.* Guarantee fees paid in connection with applications that are accepted by CCC will ordinarily not be refundable. Once CCC notifies an Exporter of acceptance of an application, the fee for that application will not be refunded unless the Director determines that such refund will be in the best interest of CCC, even if the Exporter withdraws the application prior to CCC's issuance of the Payment Guarantee. If CCC does not accept an application for a Payment Guarantee or accepts only part of the guarantee

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coverage requested, a full or pro rata refund of the fee will be made.

§ 1493.120 Assignment of the Payment Guarantee.

(a) *Requirements for assignment.* The Exporter may assign the Payment Guarantee only to a U.S. Financial Institution approved for participation by CCC. The assignment must cover all amounts payable under the Payment Guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(1) Made to one party acting for two or more parties, or

(2) Subject to further assignment.

(b) *CCC to receive notice of assignment of payment guarantee.* A notice of assignment signed by the parties thereto must be filed with CCC by the Assignee in the manner specified on the USDA Web site. The name and address of the Assignee must be included on the written notice of assignment. The notice of assignment should be received by CCC within 30 calendar days of the date of assignment.

(c) *Required certifications.* (1) The U.S. Financial Institution must include the following certification on the notice of assignment: “I certify that:

(i) [Name of Assignee] has verified that the Foreign Financial Institution, at the time of submission of the notice of assignment, is not present as an excluded party on the SAM list; and

(ii) To the best of my knowledge and belief, the information provided pursuant to §1493.40 has not changed and [name of Assignee] still meets all of the qualification requirements of §1493.40.”

(2) If the Assignee makes a false certification with respect to a Payment Guarantee, CCC may, in its sole discretion, in addition to any other action available as a matter of law, rescind and cancel the Payment Guarantee, reject the assignment of the Payment Guarantee, and/or commence legal action and/or administrative proceedings against the Assignee.

(d) *Notice of eligibility to receive assignment.* In cases where a U.S. Financial Institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this sec-

tion, CCC will provide notice thereof to the U.S. Financial Institution and to the Exporter issued the Payment Guarantee.

(e) *Ineligibility of U.S. Financial Institutions to receive an assignment and proceeds.* A U.S. Financial Institution will be ineligible to receive an assignment of a Payment Guarantee or the proceeds payable under a Payment Guarantee if such U.S. Financial Institution:

(1) At the time of assignment of a Payment Guarantee, is not in compliance with all requirements of 1493.40(a); or

(2) Is the branch, agency, or subsidiary of the Foreign Financial Institution issuing the Letter of Credit; or

(3) Is owned or controlled by an entity that owns or controls the Foreign Financial Institution issuing the Letter of Credit; or

(4) Is the U.S. parent of the Foreign Financial Institution issuing the Foreign Financial Institution Letter of Credit; or

(5) Is owned or controlled by the government of a foreign country and the Payment Guarantee has been issued in connection with export sales of U.S. Agricultural Commodities to Importers located in such foreign country.

(f) *Repurchase agreements.* (1) The Holder of the Payment Guarantee may enter into a Repurchase Agreement, to which the following requirements apply:

(i) Any repurchase under a Repurchase Agreement by the Holder of the Payment Guarantee must be for the entirety of the outstanding balance under the associated Repayment Obligation;

(ii) In the event of a default with respect to the Repayment Obligation subject to a Repurchase Agreement, the Holder of the Payment Guarantee must immediately effect such repurchase; and

(iii) The Holder of the Payment Guarantee must file all documentation required by §§1493.160 and 1493.170 in case of a default by the Foreign Financial Institution under the Payment Guarantee.

(2) The Holder of the Payment Guarantee shall, within five Business Days of execution of a transaction under the

Repurchase Agreement, notify CCC of the transaction in writing in the manner specified on the USDA Web site. Such notification must include the following information:

(i) Name and address of the other party to the Repurchase Agreement;

(ii) A statement indicating whether the transaction executed under the Repurchase Agreement is for a fixed term or if it is terminable upon demand by either party. If fixed, provide the purchase date and the agreed upon date for repurchase. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: “[Name of Holder of the Payment Guarantee] has entered into a Repurchase Agreement that meets the provisions of 7 CFR 1493.120(f)(1) and, prior to entering into this agreement, verified that [name of other party to the Repurchase Agreement] is not present as an excluded party on the SAM list.”

(3) Failure of the Holder of the Payment Guarantee to comply with any of the provisions of paragraph (f) of this section may result in CCC annulling coverage on the Foreign Financial Institution Letter of Credit and Terms and Conditions Document, if applicable, covered by the Payment Guarantee.

§ 1493.130 Evidence of export.

(a) *Report of export.* The Exporter is required to provide CCC an evidence of export report for each shipment made under the Payment Guarantee. This report must include the following information:

(1) Payment Guarantee number;

(2) Evidence of export report number (e.g., Report 1, Report 2) reflecting the report’s chronological order of submission under the particular Payment Guarantee;

(3) Date of Export;

(4) Destination country or region. If the sale was registered under a regional program, the Exporter must indicate the specific country or countries within the region to which the goods were shipped;

(5) Exporter’s sale number;

(6) Exported Value;

(7) Quantity;

(8) A full description of the commodity exported, including the applicable six-digit Harmonized System commodity classification code;

(9) Unit sales price received for the commodity exported and the Incoterms 2010 basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the Exporter’s application for a Payment Guarantee, the Exporter is also required to submit a statement explaining the reason for the difference;

(10) Description and value of Discounts and Allowances, if any;

(11) The Exporter’s statement, “All certifications set forth in 7 CFR 1493.140 are hereby being made by the Exporter in this Evidence of Export.” which, when included in the evidence of export by the Exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.140; and

(12) In addition to all of the above information, the final evidence of export report for the Payment Guarantee must include the following:

(i) The statement “Exports under the Payment Guarantee have been completed.”

(ii) A statement summarizing the total quantity and value of the commodity exported under the Payment Guarantee (i.e., the cumulative totals on all numbered evidence of export reports).

(b) *Time limit for submission of evidence of export.* (1) The Exporter must provide a written report to the CCC in the manner specified on the USDA Web site within 30 calendar days of the Date of Export.

(2) If at any time the Exporter determines that no shipments are to be made under a Payment Guarantee, the Exporter is required to notify CCC in writing no later than the final date to export specified on the Payment Guarantee by furnishing the Payment Guarantee number and stating “no exports will be made under the Payment Guarantee.”

(3) Requests for an extension of the time limit for submitting an evidence of export report must be submitted in writing by the Exporter to the Director and must include an explanation of

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why the extension is needed. An extension of the time limit may be granted if such extension is requested prior to the expiration of the time limit for filing and is determined by the Director to be in the best interests of CCC.

(c) *Failure to comply with time limits for submission.* CCC will not accept any new applications for Payment Guarantees from an Exporter under §1493.70 until the Exporter is fully in compliance with the requirements of paragraph (b) of this section for all existing Payment Guarantees issued to the Exporter or has requested and been granted an extension per paragraph (b)(3) of this section.

(d) *Export sales reporting.* Exporters have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), for exports of certain agricultural commodities and products thereof.

§ 1493.140 Certification requirements for the evidence of export.

By providing the statement contained in §1493.130(a)(11), the Exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been met. The Exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the Exporter makes false certifications with respect to a Payment Guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any commodities not yet exported and/or to commence legal action and/or administrative proceedings against the Exporter. The Exporter, in submitting the evidence of export and providing the statement set forth in §1493.130(a)(11), certifies that:

(a) The agricultural commodity or product exported under the Payment Guarantee is a U.S. Agricultural Commodity;

(b) The U.S. Agricultural Commodity was shipped directly to the country or region specified on the Payment Guarantee;

(c) There have not been any corrupt payments or extra sales services or

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other items extraneous to the transaction provided, financed, or guaranteed in connection with the export sale, and that the export sale complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(d) If the Exporter has not assigned the Payment Guarantee to a U.S. Financial Institution, the Exporter has verified that the Foreign Financial Institution, at the time of submission of the evidence of export report, is not present as an excluded party on the SAM list;

(e) The transaction is an Eligible Export Sale; and

(f) The information provided pursuant to §§1493.30 and 1493.70 has not changed (except as agreed to and amended by CCC) and the Exporter still meets all of the qualification requirements of §1493.30.

§ 1493.150 Proof of entry.

(a) *Diversion.* The diversion of U.S. Agricultural Commodities covered by a Payment Guarantee to a country or region other than that shown on the Payment Guarantee is prohibited, unless expressly authorized in writing by the Director.

(b) *Records of proof of entry.* (1) Exporters must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the U.S. Agricultural Commodities exported in connection with the GSM-102 program in the country or region that was the intended country or region of destination of such commodities. At the Director's request, the Exporter must submit to CCC records demonstrating proof of entry. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by an agent or representative of the vessel or shipline that delivered the U.S. Agricultural Commodity to the importing country, or by a private surveyor in the importing country, or

other documentation deemed acceptable by the Director showing:

- (i) That the U.S. Agricultural Commodity entered the importing country or region;
 - (ii) The identification of the export carrier;
 - (iii) The quantity of the U.S. Agricultural Commodity;
 - (iv) The kind, type, grade and/or class of the U.S. Agricultural Commodity; and
 - (v) The date(s) and place(s) of unloading of the U.S. Agricultural Commodity in the importing country or region.
- (2) Where shipping documents (e.g., bills of lading) clearly demonstrate that the U.S. Agricultural Commodities were shipped to the destination country or region, proof of entry verification may be provided by the Importer.

§ 1493.160 Notice of default.

(a) *Notice of default.* If the Foreign Financial Institution issuing the Letter of Credit fails to make payment pursuant to the terms of the Letter of Credit or the Terms and Conditions Document, the Holder of the Payment Guarantee must submit a notice of default to CCC as soon as possible, but not later than 5 Business Days after the date that payment was due from the Foreign Financial Institution (the due date). A notice of default must be submitted in writing to CCC in the manner specified on the USDA Web site and must include the following information:

- (1) Payment Guarantee number;
- (2) Name of the country or region as shown on the Payment Guarantee;
- (3) Name of the defaulting Foreign Financial Institution;
- (4) Payment due date;
- (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and Ordinary Interest, and including a copy of the repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment;
- (6) Date of the Foreign Financial Institution's refusal to pay, if applicable;
- (7) Reason for the Foreign Financial Institution's refusal to pay, if known, and copies of any correspondence with

the Foreign Financial Institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the Holder of the Payment Guarantee fails to notify CCC of a default within 5 Business Days, CCC may deny the claim for that default.

(c) *Impact of a default on other existing Payment Guarantees.* (1) In the event that a Foreign Financial Institution defaults under a Repayment Obligation, CCC may declare that such Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM-102 Program. If CCC determines that such defaulting Foreign Financial Institution is no longer eligible for the GSM-102 Program, CCC shall provide written notice of such ineligibility to all Exporters and Assignees, if any, having Payment Guarantees covering transactions with respect to which the defaulting Foreign Financial Institution is expected to issue a Letter of Credit. Receipt of written notice from CCC that a defaulting Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM-102 Program shall constitute withdrawal of coverage of that Foreign Financial Institution under all Payment Guarantees with respect to any Letter of Credit issued on or after the date of receipt of such written notice. CCC will not withdraw coverage of the defaulting Foreign Financial Institution under any Payment Guarantee with respect to any Letter of Credit issued before the date of receipt of such written notice.

(2) If CCC withdraws coverage of the defaulting Foreign Financial Institution, CCC will permit the Exporter (with concurrence of the Assignee, if any) to utilize another approved Foreign Financial Institution, and will consider other requested amendments to the Payment Guarantee, for the balance of the export sale covered by the Payment Guarantee. If no alternate Foreign Financial Institution is identified to issue the Letter of Credit within 30 calendar days, CCC will cancel the Payment Guarantee and refund the Exporter's guarantee fees corresponding to any unutilized portion of the Payment Guarantee.

§ 1493.170 Claims for default.

(a) *Filing a claim.* A claim by the Holder of the Payment Guarantee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the USDA Web site. The claim must include the following documents and information:

(1) An original cover document signed by the Holder of the Payment Guarantee and containing the following information:

(i) Payment Guarantee number;

(ii) A description of:

(A) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the Exporter or the Assignee prior to submission of the claim; and

(B) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(iii) The following certifications:

(A) A certification that the scheduled payment has not been received, listing separately scheduled principal and Ordinary Interest;

(B) A certification of the amount of the defaulted payment, indicating separately the amounts for defaulted principal and Ordinary Interest;

(C) A certification that all documents submitted under paragraph (a)(3) of this section are true and correct copies; and

(D) A certification that all documents conforming with the requirements for payment under the Foreign Financial Institution Letter of Credit have been submitted to the negotiating bank or directly to the Foreign Financial Institution under such Letter of Credit.

(2) An original instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the Holder of the Payment Guarantee to the amount of payment in default under the applicable export sale. The instrument must reference the ap-

plicable Foreign Financial Institution Letter of Credit and, if applicable, the Terms and Conditions Document; and

(3) A copy of each of the following documents:

(i) The repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment (if the Ordinary Interest rates for future payments are unknown at the time the claim for default is submitted, provide estimates of such rates);

(ii)(A) The Foreign Financial Institution Letter of Credit securing the export sale; and

(B) If applicable, the Terms and Conditions Document;

(iii) Depending upon the method of shipment, the ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the bill of lading and the entry certificate or similar document signed by an official of the importing country. If the transaction utilizes electronic bill(s) of lading (e-BL), a print-out of the e-BL from electronic system with an electronic signature is acceptable;

(iv)(A) The Exporter's invoice showing, as applicable, the FAS, FCA, FOB, CFR or CIF values; or

(B) If there was an Intervening Purchaser, both the Exporter's invoice to the Intervening Purchaser and the Intervening Purchaser's invoice to the Importer;

(v) The evidence of export report(s) previously submitted by the Exporter to CCC in conformity with the requirements of § 1493.130(a); and

(vi) If the defaulted payment was part of a transaction executed under a Repurchase Agreement, written evidence that the repurchase occurred as required under § 1493.120(f)(1)(ii).

(b) *Additional documents.* If a claim is denied by CCC, the Holder of the Payment Guarantee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the Holder of the Payment Guarantee need only provide all of the required claims documents with the initial claim relating to a covered

transaction. For subsequent claims relating to failure of the Foreign Financial Institution to make scheduled installments on the same export shipment, the Holder of the Payment Guarantee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1)(i) and (ii) and (a)(1)(iii)(A) and (B) of this section; an instrument of subrogation as per paragraph (a)(2) of this section; and the date the original claim was filed with CCC.

(d) *Alternative satisfaction of Payment Guarantees.* CCC may establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a Payment Guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the Payment Guarantee and would not result in CCC paying more than the amount of CCC's obligation.

§ 1493.180 Payment for default.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.170, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable Payment Guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the Letter of Credit and, if applicable, the Terms and Conditions Document. If CCC determines that it is liable to the Holder of the Payment Guarantee, CCC will pay the Holder of the Payment Guarantee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims submitted with respect to any Payment Guarantee, not including any CCC Late Interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The Guaranteed Value as stated in the Payment Guarantee, plus Eligible Interest, less any payments received or funds realized from insurance, security

or collateral arrangements prior to claim by the Exporter or the Assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the Exporter or the Assignee); or

(2) The guaranteed percentage (as indicated in the Payment Guarantee) of the Exported Value indicated in the evidence of export, plus Eligible Interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the Exporter or the Assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the Exporter or the Assignee).

(c) *CCC Late Interest.* If CCC does not pay a claim within 15 Business Days of receiving the claim in good order, CCC Late Interest will accrue in favor of the Holder of the Payment Guarantee beginning with the sixteenth Business Day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. CCC Late Interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90 calendar days of the date CCC Late Interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(d) *Accelerated payments.* CCC will pay claims only on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the Firm Export Sales Contract, the Foreign Financial Institution Letter of Credit, the Terms and Conditions Document (if applicable), or any obligation owed by the Foreign Financial Institution to the Holder of the Payment Guarantee that is related to the Letter of Credit issued in favor of the Exporter, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its

option may declare up to the entire amount of the unpaid balance, plus accrued Ordinary Interest, in default, require the Holder of the Payment Guarantee to invoke the acceleration provision in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document, require submission of all claims documents specified in §1493.170, and make payment to the Holder of the Payment Guarantee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the Assignee.* If an Assignee submits a claim for default pursuant to Section 1493.170 and all documents submitted appear on their face to conform with the requirements of such section, CCC will not hold the Assignee responsible or take any action or raise any defense against the Assignee for any action, omission, or statement by the Exporter of which the Assignee has no knowledge.

§ 1493.190 Recovery of defaulted payments.

(a) *Notification.* Upon claim payment to the Holder of the Payment Guarantee, CCC will notify the Foreign Financial Institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies related to the obligation in default are recovered by the Exporter or the Assignee from or on behalf of the defaulting party, the Importer, or any source whatsoever (excluding payments among CCC, the Exporter, and the Assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid to CCC. If such monies are not received by CCC within 15 Business Days from the date of recovery by the Exporter or the Assignee, such party will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of re-

covery and will accrue from such date to the date of payment by the Exporter or the Assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA Web site.

(2) If CCC recovers monies that should be applied to a Payment Guarantee for which a claim has been paid by CCC, CCC will pay the Holder of the Payment Guarantee its pro rata share, if any, provided that the required information necessary for determining pro rata distribution has been furnished. If a required payment is not made by CCC within 15 Business Days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the Holder of the Payment Guarantee.

(c) *Allocation of recoveries.* Recoveries received by CCC from any source whatsoever that are related to the obligation in default will be allocated by CCC to the Holder of the Payment Guarantee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default on the date the claim is paid by CCC. Once CCC has paid a particular claim under a Payment Guarantee, CCC pro-rates any collections it receives and shares these collections proportionately with the Holder of the Payment Guarantee until both CCC and the Holder of the Payment Guarantee have been reimbursed in full.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the Payment Guarantee, under the following

circumstances the Exporter or the Assignee will be liable to CCC for any amounts paid by CCC under the Payment Guarantee:

(1) The Exporter will be liable to CCC when and if it is determined by CCC that the Exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the Exporter for the purpose of obtaining the Payment Guarantee or for fulfilling obligations under the GSM-102 program; and

(2) The Assignee will be liable to CCC when and if it is determined by CCC that the Assignee has engaged in fraud or otherwise violated program requirements.

(e) *Cooperation in recoveries.* Upon payment by CCC of a claim to the Holder of the Payment Guarantee, the Holder of the Payment Guarantee and the Exporter will cooperate with CCC to effect recoveries from the Foreign Financial Institution and/or the Importer. Cooperation may include, but is not limited to, submission of documents to the Foreign Financial Institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in § 1493.180(d); and other actions that do not increase the obligation of the Holder of the Payment Guarantee or the Exporter under the Payment Guarantee.

§ 1493.191 Additional obligations and requirements.

(a) *Maintenance of records, access to premises, and responding to CCC inquiries.* For a period of five years after the date of expiration of the coverage of a Payment Guarantee, the Exporter and the Assignee, if applicable, must maintain and make available all records and respond completely to all inquiries pertaining to sales and deliveries of and extension of credit for U.S. Agricultural Commodities exported in connection with a Payment Guarantee, including those records generated and maintained by agents, Intervening Purchasers, and related companies involved in special arrangements with

the Exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the Exporter and the Assignee, as applicable, during regular business hours from the effective date of the Payment Guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the Exporter's, Assignee's, agent's, Intervening Purchaser's or related company's books, records and accounts concerning transactions relating to the Payment Guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the Exporter and the Assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the Exporter in connection with the Payment Guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all Exporters and U.S. and Foreign Financial Institutions to review, and fully acquaint themselves with, all regulations, Program Announcements, and notices to participants relating to the GSM-102 program, as applicable. All Exporters and U.S. and Foreign Financial Institutions participating in the GSM-102 program are hereby on notice that they will be bound by this subpart and any terms contained in the Payment Guarantee and in applicable Program Announcements.

(c) *Submission of documents by Principals.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments) by Exporters, Assignees, or Foreign Financial Institutions under this subpart must be signed by a Principal of the Exporter, Assignee, or Foreign Financial Institution or their authorized designee(s). In cases where the designee is acting on behalf of the

Principal, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the Exporter, Assignee, or Foreign Financial Institution must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by Exporter may lead to rescission of Payment Guarantee.* CCC may cancel a Payment Guarantee in the event that an Exporter makes a willful misstatement in the certifications in §§1493.80(b) and 1493.140(c) or if the Exporter fails to comply with the provisions of §1493.150 or paragraph (a) of this section. However, notwithstanding the foregoing, CCC will not cancel its Payment Guarantee, if it determines, in its sole discretion, that an Assignee had no knowledge of the Exporter's misstatement or noncompliance at the time of assignment of the Payment Guarantee.

§ 1493.192 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the Exporter or the Assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the GSM-102 program, this subpart, the applicable Program Announcements and notices to participants, or the Payment Guarantee.

(2) The Exporter or the Assignee may seek reconsideration of a determination made by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the Exporter or the Assignee of the determination. The Exporter or the Assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the final documentary

evidence submitted by the Exporter or the Assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the Exporter or the Assignee fails to request reconsideration of a determination by the Director, then the determination of the Director will be deemed final.

(3) If the Exporter or the Assignee requests reconsideration of a determination by the Director pursuant to paragraph (a)(2) of this section, and the Director upholds the original determination, then the Exporter or the Assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the Exporter or the Assignee fails to appeal the Director's final determination within 30 calendar days as provided in paragraph (b)(1) of this section, then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) An Exporter or Assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM for a determination of the Director. An appeal to the GSM must be made in writing and filed with the office of the GSM no later than 30 calendar days following the date of the final determination by the Director. If the Exporter or Assignee requests an administrative hearing in its appeal letter, it shall be entitled to a hearing before the GSM or the GSM's designee.

(2) If the Exporter or Assignee does not request an administrative hearing, the Exporter or Assignee must indicate in its appeal letter whether or not it will submit any additional written information or documentation for the GSM to consider in acting upon its appeal. This information or documentation must be submitted to the GSM within 30 calendar days of the date of the appeal letter to the GSM. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the Exporter or Assignee to the GSM.

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(3) If the Exporter or the Assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the Exporter or Assignee. This date will ordinarily be within 60 calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The Exporter or Assignee and/or its counsel may present any relevant testimony or documentary evidence to the GSM. A transcript of the hearing will not ordinarily be prepared unless the Exporter or Assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date of the hearing or the date of receipt of the transcript, if one is to be prepared.

(4) The decision of the GSM will be the final determination of CCC. The Exporter or Assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the Exporter or Assignee has violated the terms of this subpart or the Payment Guarantee by failing to comply with a determination made under this section, and the Exporter or Assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to take any measures available to CCC under applicable law.

(d) *Exporter's obligation to perform.* The Exporter will continue to have an obligation to perform pursuant to the provisions of these regulations and the terms of the Payment Guarantee pending the conclusion of all procedures under this section.

§ 1493.195 Miscellaneous provisions.

(a) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the Payment Guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the Payment

Guarantee if made with a corporation for its general benefit.

(b) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0004.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

SOURCE: 62 FR 42656, Aug. 8, 1997, unless otherwise noted.

§ 1493.200 General statement.

This subpart governs the Commodity Credit Corporation's (CCC) Facility Guarantee Program (FGP). CCC will issue facility payment guarantees for project applications meeting the terms and conditions of the Facility Guarantee Program (FGP) and where private sector financing is otherwise not available. This subpart describes the criteria and procedures for applying for a facility payment guarantee, and contains the general terms and conditions of such a guarantee. These general terms and conditions may be supplemented by special terms and conditions specified in program announcements or notices to participants published prior to the issuance of a facility payment guarantee and, if so, will be incorporated by reference on the face of the facility payment guarantee issued by CCC.

§ 1493.210 Definition of terms.

Terms set forth in this subpart will have the following meaning:

Assignee. A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive payment under the facility payment guarantee.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the U.S. Department of Agriculture, authorized

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pursuant to the Commodity Credit Corporation Charter Act of 1948, *as amended*, 15 U.S.C. 714 *et seq.*, and subject to the general supervision and direction of the Secretary of Agriculture.

Contacts P/R. A notice issued by Foreign Agricultural Service, U.S. Department of Agriculture (FAS/USDA) by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of facility payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

Contract value. The total negotiated dollar amount for the export sale of goods and services to emerging markets.

Date of export for goods. The on-board date of an ocean bill of lading or an airway bill, the on-board ocean carrier date of an intermodal bill of lading; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

Date of export for services. The date interest begins to accrue on credit extended to cover payment for services, except for freight and marine insurance where the date of export is the same date as for the goods exported.

Discounts and allowances. Any consideration provided directly or indirectly, by or on behalf of an exporter, to an importer in connection with a sale of goods or services, in excess of the value of such goods or services. Discounts or allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligation; or the whole or partial release of the importer from any financial or contractual obligation.

Facility. An opportunity or project that improves the handling, marketing, processing, storage, or distribution of imported agricultural commodities or products.

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GSM. The General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, acting in his capacity as Vice President, CCC; or his designee.

U.S. goods. Goods that are assembled, processed or manufactured in, and exported from, the United States including goods which contain imported raw materials or imported components.

U.S. services. Services performed by citizens or legal residents of the United States, including those temporarily residing outside the United States.

§ 1493.220 Exporter eligibility.

An exporter may apply for a facility payment guarantee if such exporter:

- (a) Is a citizen or legal resident of the United States or is a business organized under the laws of any state of the United States or the District of Columbia;
- (b) Has an established place of business in the United States;
- (c) Has a registered agent for service of process in the United States; and
- (d) Is not suspended or debarred, or owned or controlled by a person who is suspended or debarred, from contracting with, or participating in programs administered by, a U.S. Government agency.

§ 1493.230 Eligible transactions.

(a) *Program announcements.* From time to time CCC will issue program announcements indicating the availability of facility payment guarantees in connection with sales of goods or services to emerging markets. The announcements will specify the emerging markets, the maximum amount, in U.S. dollars, of guarantee exposure that CCC will undertake, and may specify special terms or conditions that will be applicable.

(b) *Sale requirements.* CCC will issue facility payment guarantees only in connection with projects that CCC determines will benefit primarily exports of U.S. agricultural commodities and products, and only where there is a firm contract for the sale of goods or services for the establishment or improvement of an agriculture-related facility. The contract may be contingent, however, on the issuance of a CCC facility payment guarantee.

(c) *Initial payment requirement.* The contract for sale of goods or services between the exporter and the importer shall oblige the importer to make an initial payment(s) to the exporter of at least 15 percent of the net contract value in §1493.260(b)(1). Such initial payment(s) shall be in U.S. dollars or instruments having a definite value in U.S. dollars, and shall be made prior to the export of the goods or services.

(d) *Required method of payment.* CCC will issue a facility payment guarantee only in connection with a sale in which payment will be made under either:

(1) An irrevocable foreign bank letter of credit specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as payments become due; or

(2) An irrevocable foreign bank letter of credit supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment in U.S. dollars as such payments become due.

(e) *Form of letter of credit.* The foreign bank letter of credit referred to in paragraph (d) of this section shall be an irrevocable commercial letter of credit, subject to the revision of the International Chamber of Commerce Uniform Customs and Practices for Documentary Credits[®]; in effect when the letter of credit is issued, providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(f) *Form of related obligation.* The related obligation referred to in paragraph (d) of this section shall be in one of the following forms:

(1) A letter of credit including a specific promise to pay on deferred payment terms as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit;

(2) A separate document specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obligated to repay

the U.S. financial institution on deferred payment terms;

(3) A separate document setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by a U.S. financial institution pursuant to, and subject to, repayment in accordance with the terms of such related obligation; or

(4) A promissory note executed by a foreign bank issuing the letter of credit in favor of the financial institution.

§ 1493.240 Initial application and letter of preliminary commitment.

(a) *Initial application.* An exporter may apply for a facility payment guarantee by submitting the following information:

(1) A cover sheet with the title: "Application for a Facility Payment Guarantee—Preliminary Commitment";

(2) The program announcement number;

(3) The emerging market;

(4) The name, contact person, address, and telephone number and, if applicable, facsimile number and E-mail address of:

(i) The exporter;

(ii) The exporter's registered agent for service of process in the United States;

(iii) The exporter's assignee, if applicable;

(iv) The importer;

(v) The end-user of the goods or services if other than the importer;

(vi) The foreign bank expected to issue the letter of credit or related obligation; and

(vii) The financial institution in the United States expected to provide financing;

(5) A statement on letterhead from a:

(i) Foreign bank indicating an interest in guaranteeing payment, in U.S. dollars, for goods or services to be exported under the facility payment guarantee at least equal to the net contract value listed in paragraph (a)(14) of this section, less the initial payment requirement listed in paragraph (a)(15) of this section; and

(ii) Financial institution in the U.S. indicating an interest in financing the export sales of goods or services under the facility payment guarantee for an

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amount at least equal to the net contract value listed in paragraph (a)(14) of this section less the initial payment requirement listed in paragraph (a)(15) of this section. The financial institution must state that such financing would not otherwise be available without an FGP payment guarantee;

(6) The period for which credit is being extended to finance the sale of goods or services covered by the facility payment guarantee;

(7) The exporter's sales number pertinent to this application and a description of the status of the intended sale;

(8) A description (e.g., a process flow diagram) of the agriculture-related facility that will use the goods or services to be covered by the facility payment guarantee and an explanation of how these goods and services will be used to improve handling, marketing, processing, storage, or distribution of agricultural commodities or products;

(9) A brief description of each good or service to be covered by the facility payment guarantee including, where applicable, brand name, model number, Standard Industrial Classification (SIC) or the North American Industry Classification System (NAICS) code, and contract specifications;

(10) The final date for export of goods or services. If applicable, include construction start date, milestones (e.g., installation), and contractual deadline for completion of project;

(11) The contract value for the sale of goods or services and the basis of sale for goods to be exported (e.g., FOB, CFR, CIF);

(12) The description and value of the goods or cost of services listed in paragraph (a)(11) of this section that are not U.S. goods or services;

(13) Identification and cost of, and justification for, those services listed in paragraph (a)(12) of this section for which the exporter requests CCC to provide coverage;

(14) The net contract value in §1493.260(b)(1) obtained by subtracting paragraph (a)(12) of this section from paragraph (a)(11) of this section, and adding paragraph (a)(13) of this section;

(15) The amount to be paid in accordance with the initial payment requirement (§1493.230(c));

(16) The description and dollar amount of discounts and allowances provided in connection with the sale of goods or services covered by the facility payment guarantee;

(17) The facility base value in §1493.260(b)(2) obtained by subtracting paragraphs (a)(15) and (a)(16) of this section from paragraph (a)(14) of this section;

(18) The maximum guaranteed value under the facility payment guarantee determined by multiplying the facility base value listed in paragraph (a)(17) of this section by the guarantee rate of coverage announced by CCC in §1493.260(b)(3);

(19) A map or other description of the facility's location and distance from major population centers of neighboring countries;

(20) For all principal agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed, by the proposed project after completion, provide:

(i) A list or table identifying such principal inputs;

(ii) The likely countries of origin for each input;

(iii) Estimated annual quantities, in metric tons, of each input listed in paragraph (a)(20)(i) of this section to be used by the project for five years from the final date of export or until the expiration of the facility payment guarantee, whichever comes first; and

(iv) An analysis, including price, cost, and other assumptions (the reasons why U.S. agricultural commodities or products will be more competitive inputs than commodities or products from other sources, and whether the projected use of U.S. agricultural commodities or products depends on the availability of U.S. export bonus or credit guarantee programs), of which inputs listed in paragraph (a)(20)(i) of this section will represent increased imports of U.S. agricultural commodities or products:

(A) To a greater degree than imports of agricultural commodities or products from other countries;

(B) To or at levels significantly above those expected in the absence of the project; and

(C) For a period of five years from the final date of export or until expiration of the facility payment guarantee, whichever comes first.

(21) If applicable, a list of agricultural outputs or final products of the proposed project and:

(i) Projected annual quantities (for five years or until the expiration of the facility payment guarantee, whichever comes first), in metric tons, of each output to be marketed;

(A) Within the emerging market; and

(B) In any other country;

(ii) Quantities, by country of origin, of products imported into the emerging market during the past year which would compete with such outputs; and

(iii) An analysis of whether products of the project will significantly displace U.S. exports of similar agricultural commodities or products in any market;

(22) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing financing to the exporter in connection with this export sale, and copies of any documents relating to such arrangements;

(23) A description of the exporter's experience selling goods or providing services similar to those for which the exporter seeks to obtain facility payment guarantee coverage;

(24) A statement of how this project may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the emerging market. Include in the statement the share of private sector ownership of the project;

(25) The exporter's signature.

(b) *Application fee.* The exporter shall pay the application fee specified in the program announcement at the time the application is submitted. An application will not be considered without payment of the specified fee. The application fee is nonrefundable.

(c) *Letter of preliminary commitment.* CCC will determine whether, in its judgment, the project in connection with which the exporter seeks a facility payment guarantee is likely to increase exports of U.S. agricultural commodities or products to an emerg-

ing market; and whether the project is likely to benefit primarily U.S. agricultural commodities or products as opposed to commodities or products originating in other countries. If necessary, CCC may seek additional information from an applicant prior to making its determination. If CCC determines that an application meets these standards and appears to represent, in CCC's judgment, the best use of available resources, CCC will respond to the applicant with a letter of preliminary commitment indicating CCC's interest in issuing a facility payment guarantee conditioned on its approval of the exporter's final application.

§ 1493.250 Final application and issuance of a facility payment guarantee.

(a) *Final application.* An exporter who has received a letter of preliminary commitment may, within six months of the date of such letter, submit a final application to CCC for a facility payment guarantee which shall include the following information:

(1) A cover sheet with the title: "Application for a Facility Payment Guarantee—Final Commitment."

(2) A letterhead statement from the importer's bank or other documentation confirming the importer has the financial ability to comply with the initial payment requirement in § 1493.230(c);

(3) Written evidence of a firm sale signed by the exporter and the importer, specifying at minimum, the following information: Goods or services to be exported, quantities of such items, delivery terms (e.g., FOB, CFR, CIF), delivery period(s), contract value, payment terms, and date of sale. A sales contract may be contingent upon obtaining a facility payment guarantee;

(4) A description of any changes in the information submitted in the preliminary application; and

(5) The exporter's signature;

(b) *Additional information.* CCC shall have the right to request the exporter to furnish any other information and documentation it deems pertinent to the evaluation of the exporter's final application for a final commitment.

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CCC may request from the exporter an independent engineering study or economic feasibility study relating to the project.

(c) *Final commitment letter.* After making a favorable determination on the exporter's submissions, CCC will issue a final commitment letter indicating the applicable exposure fee rate and stating that CCC is prepared to issue a facility payment guarantee upon receiving full payment of the exposure fee within an allotted time. The letter will also indicate the key terms and coverage of the guarantee to be issued. CCC will also inform exporters in writing when it denies their request for a facility payment guarantee.

(d) *Exposure fee.* The exposure fee is calculated by multiplying the requested guaranteed value (up to the maximum established by CCC's final commitment letter) by the exposure fee rate. Once the facility payment guarantee is issued to the exporter, CCC will ordinarily not refund the exposure fee. If CCC does not issue a facility payment guarantee, or issues a guarantee for only part of the coverage requested, CCC will make a full or *pro rata* refund of the exposure fee, as appropriate.

(e) *Issuance of the facility payment guarantee.* Upon receipt of the exposure fee, CCC will issue a facility payment guarantee.

§ 1493.260 Facility payment guarantee.

(a) *CCC's maximum obligation.* CCC will agree to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value stipulated on the face of the facility payment guarantee, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or related obligation. The exact amount of CCC's liability in the event of default will be determined in accordance with § 1493.310(b).

(b) *Calculation of maximum guarantee coverage.* CCC will determine the maximum amount of its obligation under a facility payment guarantee by calculating a:

(1) Net contract value equal to the contract value minus:

(i) The value of goods that are not U.S. goods; and

(ii) The cost of services that are not U.S. services (except those services the exporter requests CCC to determine are vital to the success of the project and approved to be included in the net contract value);

(2) Facility base value equal to net contract value minus:

(i) The amount to be paid in accordance with the initial payment requirement in § 1493.230(c); and

(ii) The amount of discounts and allowances; and

(3) Maximum guaranteed value equal to:

(i) A principal amount determined by multiplying the facility base value (as determined in § 1493.260(b)(2)) by the guaranteed percentage specified in the program announcement; and

(ii) Interest on such principal amount at the rate specified in the applicable program announcement, not to exceed the investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(c) *Value and cost.* For the purposes of this section:

(1) *Value* means declared customs value of the goods; or, in the absence of specific information regarding declared customs value, the fair market wholesale value of the imported goods in the United States at the time they were acquired by the participant; and

(2) *Cost* means actual amount paid by the exporter for the services in an arms-length transaction; or in the absence of an arms-length transaction, the fair market value of the services at the time the services were provided.

(d) *U.S. content test.* (1) CCC will issue a guarantee only if the following items collectively represent less than 50 percent of the net contract value in § 1493.260(b)(1):

(i) The value of imported components (except for raw materials) that are assembled, processed, or manufactured into U.S. goods included in the net contract value;

(ii) The cost of services that are not U.S. services (including freight on foreign flag carriers and transportation insurance registered with foreign agents) that, at the request of the exporter, CCC determines are vital to the success of the project and approves

their inclusion in the net contract value;

(2) For purpose of this subsection, minor or cosmetic procedures (e.g., affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing;

(3) For purpose of this subsection, local services which involve costs for hotels, meals, transportation, and other similar services incurred in the emerging market are not U.S. services.

(e) *Period of guarantee coverage.* The payment guarantee will apply to the period beginning on the date(s) of export(s) and will continue during the credit term specified in the facility payment guarantee. For goods, the period of coverage will also apply from the date on which interest begins to accrue, if earlier than the date of export. The final payments of principal and interest by the foreign bank must come due within the period of guarantee coverage.

(f) *Terms of the CCC facility payment guarantee.* The terms of CCC's coverage will be set forth in the facility payment guarantee and will include the provisions of this subpart, which may be supplemented by any program announcement(s) or notice(s) to participants in effect at the time the facility payment guarantee is approved by CCC.

(g) *Final date to export.* The final date to export will be stated in the facility payment guarantee.

(h) *Ineligible exports.* Goods or services with a date of export prior to the date CCC issues the facility payment guarantee are ineligible for coverage unless approved by the GSM.

(i) *Additional requirements.* The facility payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the facility payment guarantee, are binding on the exporter or the exporter's assignee.

(j) *Amendments.* Exporters must notify CCC of any amendments concerning contracts covered by a facility payment guarantee. CCC will determine if the contract amendments will require amendments to the facility payment guarantee. Amending the fa-

cility payment guarantee may result in an increase to the exposure fee. Requests made by the exporter to amend the facility payment guarantee so as to change the guaranteed value must have the concurrence of the assignee when an assignment has been made.

(k) *Effective date.* The facility payment guarantee shall become effective on the date of export of the goods or services.

APPENDIX TO § 1493.260—ILLUSTRATION OF FGP COVERAGE OF IMPORTED RAW MATERIALS, COMPONENTS, AND SERVICES THAT ARE NOT U.S. SERVICES

The following example illustrates CCC's regulations and policy options with regard to issuing a payment guarantee for a project which includes imported raw materials, imported components, and services that are not U.S. services:

1. Ten grain trucks and one truck scale are to be exported from the U.S. to an emerging market. The trucks will provide the ability to purchase larger quantities of grain from the U.S. The contract value totals \$2,025,000, cost, insurance and freight (CIF) basis.

2. The fenders, hoods and doors of the trucks have been manufactured and assembled in the U.S. and contain some imported raw materials (sheet metal).

3. Imported components consist of starters and alternators, with a U.S. customs valuation of \$149,000. These items are installed into the trucks in the U.S.

4. The truck scale was imported from Canada into the U.S. with a U.S. customs valuation of \$20,000.

5. A U.S. citizen, will travel on a foreign airline carrier to the emerging market (airfare is \$1,000) to instruct mechanics in repair and maintenance of the trucks. He will be paid a salary for this service and, in addition, will be reimbursed separately for local costs in the emerging market (e.g., hotel, meals, transportation) which are estimated to be \$5,000.

6. The trucks are to be shipped on foreign flag vessels, and the marine insurance is to be placed with a foreign agent. The combined cost of these services that are not U.S. services for which the exporter seeks coverage is estimated to be \$500,000.

CCC'S APPROVAL OF SERVICES THAT ARE NOT U.S. SERVICES

CCC agrees to include in the net contract value the foreign flag freight and marine insurance (\$500,000) and the airfare (\$1,000) of the U.S. instructor (§ 1493.260(b)(1)).

CALCULATION OF NET CONTRACT VALUE

CCC will calculate the net contract value by subtracting from the contract value

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(\$2,025,000) the U.S. customs value of the truck scale (\$20,000) in accordance with § 1493.260(b)(1)(I) and the local costs to be incurred by the U.S. instructor (\$5,000) in accordance with § 1493.260(b)(1)(ii) to equal \$2,000,000.

CCC'S DETERMINATION OF U.S. CONTENT ELIGIBILITY

The imported components and services that are not U.S. services approved for coverage total \$650,000 (*i.e.*, \$149,000 for starters and alternators, \$1,000 for airfare, \$500,000 for freight and insurance; or 32.5 percent of the net contract value of \$2,000,000 (§ 1493.260(b)(1)). Since this is less than 50 percent of the net contract value the transaction meets the U.S. content test (§ 1493.260(d)).

§ 1493.270 Certifications.

(a) *Exporter's signature.* The exporter's signature on documentation submitted to CCC under this subpart, is the exporter's certification that:

(1) There have not been and are no arrangements for any payments in violation of the Foreign Corrupt Practices Act of 1977, as amended, or other U.S. Laws;

(2) All information submitted to CCC is true and correct; and

(3) The exporter is in compliance with this subpart.

(b) *False certification.* False certifications under this subpart may result in the termination of the facility payment guarantee, suspension or debarment, or civil or criminal action.

§ 1493.280 Evidence of export report.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment of goods or provision of services covered under the facility payment guarantee. Each report must be numbered in chronological order and contain the following information in the order prescribed below:

(1) The facility payment guarantee number;

(2) The date goods or services were exported or provided;

(3) The exporter's sale number, bill of lading numbers, or identification of other documents that may be submitted to establish the contract value of the goods or services exported or provided;

(4) The net contract value of the exported goods or services as determined in accordance with § 1493.260(b)(1);

(5) The amount paid in accordance with the initial payment requirement (§ 1493.230 (c));

(6) A description and dollar value of discounts and allowances, if any;

(7) The exported value of the shipment which is the net contract value of the goods or services exported in paragraph (a)(4) of this section minus:

(i) The initial payment requirement listed in paragraph (a)(5) of this section; and

(ii) The dollar amount of any discounts and allowances listed in paragraph (a)(6) of this section;

(8) The name of the carrier and, if applicable, the name of the vessel;

(9) The final payment schedule showing the payment due dates and amounts of principal, and payment due dates for interest accrual. If the payment schedule is unknown, the exporter must indicate in writing that: "The payment schedule will be provided in an amendment to the evidence of export report when the payment schedule has been determined;"

(10) Written statements that:

(i) The goods exported or services provided were included in the final application for a final commitment as approved by CCC for coverage under the facility payment guarantee and this subpart;

(ii) The specifications and quantity of goods or services exported conform to the information contained in the exporter's application documents for a facility payment guarantee, or if different, that CCC has approved of such changes;

(iii) A letter of credit has been opened in favor of the exporter by the foreign bank shown on the facility payment guarantee to cover the dollar amount of the sale of goods or services exported less the amount paid in accordance with the initial payment requirement and less discounts and allowances; and

(11) The exporter's signature.

(b) *Final report of export.* The final evidence of export report submitted under a facility payment guarantee must contain:

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(1) A written statement that exports under the facility payment guarantee have been completed;

(2) The information requested in §1493.280(a) for the shipment(s) included in the final report; and

(3) The combined total of all dollar amounts reported under §1493.280 (a) and (b) for all reports.

(c) *Time limit for submission of evidence of export report.* Unless extended by CCC for good cause, the exporter must submit to CCC an evidence of export report:

(1) Within 60 days of the date goods are exported by rail or truck;

(2) Within 30 days of the date goods are exported by any other carrier; or

(3) Within 30 days of the date of export of services.

(d) *Late reports.* If the evidence of export report is not received by CCC within the time period for filing, the facility payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would likely result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the FGP;

(3) The obstruction of the fair administration of the FGP; or

(4) A threat to the integrity of the FGP.

§ 1493.290 Proof of entry.

(a) *Diversion.* The diversion of goods covered by a facility payment guarantee to a country other than that shown on the facility payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the goods authorized by the facility payment guarantee. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include:

(1) For goods: An original certificate, signed by a duly authorized customs or port official of the emerging market, by the importer, by an agent or representative of the vessel or ship line which delivered the goods to the emerging market, or by a private surveyor in the emerging market, or other documentation deemed acceptable by CCC:

(i) Showing that the goods entered the emerging market;

(ii) Identifying the export carrier;

(iii) Describing the goods; and

(iv) Indicating date and place the goods were unloaded in the emerging market.

(2) [Reserved]

§ 1493.300 Notice of default and claims for loss.

(a) *Notice of default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than ten days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the facility payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if approved by the Controller, CCC. The notice of default must include:

(1) Facility payment guarantee number;

(2) Name of the emerging market;

(3) Name of the defaulting bank;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of foreign bank's refusal to pay, if applicable; and

(7) Reason for the foreign bank's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's

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assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Facility payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue and the interest rate on the foreign bank obligation applicable to the claim; and

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i)(A) The foreign bank's letter of credit securing the export sale, and;

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter.

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the on-board ocean carrier date for each shipment, the airway bill; or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the emerging market;

(iii) The exporter's sales invoice(s) showing the value and basis of sale (e.g., FOB, CFR, or CIF) or, if services are billed separately, documents that the exporter or its assignee relied upon in extending the credit to the issuing foreign bank;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the evidence of export report(s) previously submitted by the exporter to CCC pursuant to §1493.280.

(c) *Subsequent claims for defaults on installments.* The exporter or an exporter's assignee need only provide one claim which meets full documentation requirements relating to a covered transaction. For subsequent claims relating to such failures of the foreign bank to make scheduled installments on the same export, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraphs (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and the date the original claim was filed with CCC.

§ 1493.310 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under §1493.300, CCC will determine whether or not a loss has occurred for which CCC is liable under the facility payment guarantee, this subpart, program announcement(s) and notice(s) to participants. If CCC determines that it is liable to the exporter or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims for loss submitted with respect to any facility payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the facility payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the facility payment guarantee) of the exported value indicated in the evidence of export report (§1493.280(a)(7)), plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the claim was found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount,

as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interest of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to the value of goods or services covered by a facility payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under § 1493.270 and § 1493.280 excluding post-export adjustments (*i.e.*, corrections of evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.300.

§ 1493.320 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank or any other source

whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a facility payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the facility payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 days from the date of recovery or 15 days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the facility payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a facility payment

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guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix to §1493.320 provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the facility payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the facility payment guarantee or for fulfilling obligations under the FGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the facility payment guarantee when and if it is determined by CCC that the exporter's assignee engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §1493.270 or the failure of an exporter to comply with the provisions of §1493.290 or §1493.330(e) will not affect the validity of any facility payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the facility payment guarantee or at the time of assignment of the facility payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank or the importer.

APPENDIX TO §1493.320—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in §1493.320, regarding pro rata sharing of recoveries made for claims filed under the FGP. For the purpose of this example only, even though CCC interest coverage is on a floating rate basis, a constant rate of interest is assumed. A typical case might be as follows:

1. The U.S. bank enters into a \$300,000 three-year credit arrangement for the export sale of goods and services with the foreign

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bank calling for equal semi-annual payments of principal and semi-annual payment of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. Exported value reported to CCC equals \$300,000.

3. The foreign bank fails to make the final principal payment of \$50,000 and an interest payment of \$2,493.15, both due on January 31.

4. On February 10, the U.S. bank files a notice of default and claim in good order with CCC.

5. CCC's guarantee states that CCC's maximum liability is limited to 95 percent of the principal amount due (\$47,500) and interest at a rate of 8 percent per annum (basis 365 days) on 95 percent of the principal (\$1,894.80).

6. CCC pays the claim on February 22.

7. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the facility payment guarantee would be computed as follows:

1. CCC's Obligation under the Facility Payment Guarantee:	
(a) Principal coverage— (95% × \$50,000)	\$47,500.00
(b) Interest coverage—(8% × \$47,500 × 182/365)	1,894.80
Total	49,394.80
(c) Late interest due from CCC (7% per annum for 11 days × \$49,394.80)	104.20
(d) Amount paid by CCC on February 22	49,499.00
2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:	
(a) Principal due January 31	50,000.00
Interest due January 31 (10% × \$ 50,000 × 182/365) ..	2,493.15
Amount owed by foreign bank as of January 31	52,493.15
(b) Penalty interest due (12% per annum for 22 days × \$ 50,000)	361.64
(c) Amount owed by for- eign bank as of Feb- ruary 22	52,854.79

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3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: 3,355.79

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is \$52,854.79, CCC would be entitled to 93.65 percent (\$49,499.00 divided by \$52,854.79) and the holder of the facility payment guarantee would be entitled to 6.35 percent (\$3,355.79 divided by \$52,854.79) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, § 1493.320(b) would apply.

§ 1493.330 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a facility payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the facility payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment. Any assignment may be made to one party as agent or trustee for two or more parties participating in the assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof to such financial institution and to the exporter issued the facility payment guarantee in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial in-

stitution will be ineligible to receive an assignment of proceeds which may become payable under a facility payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a facility payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a facility payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative satisfaction of facility payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the facility payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms or conditions for the satisfaction of CCC's obligations under a facility payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the facility payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a facility payment guarantee, the exporter or the exporter's assignee,

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as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for goods or services exported in connection with a facility payment guarantee, including those records generated and maintained by agents, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the facility payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, or a related company's books, records, and accounts concerning transactions relating to the facility payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, manufacturing, processing, and administrative and incidental costs, both normal and unforeseen.

(2) The exporter must maintain the proof of entry required by §1493.290(b), and must provide access to such document if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, this subpart, program announcement(s), and notice(s) to participants relating to the FGP, as applicable. Applicants for facility payment guarantees under this program are hereby on notice that they will be bound by any terms contained in applicable program announcement(s) or notice(s) to participants issued prior to the date of approval of a facility payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (*i.e.*, requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of

the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by:

(1) Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and

(2) The name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under this subpart are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of the facility payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the facility payment guarantee if made with a corporation for its general benefit.

(i) *Deadlines.* (1) Where a deadline is fixed in terms of days, it means business days and excludes Saturdays, Sundays and federal holidays.

(2) Where a deadline is fixed in terms of months, the deadline falls on the same day of the month as the day triggering the deadline period, or if there is no same day, the last day of the month; and

(3) Where a deadline would otherwise fall on a Saturday, Sunday or federal holiday, the deadline shall be the next business day.

Subpart D—CCC Supplier Credit Guarantee Program Operations

SOURCE: 61 FR 33831, July 1, 1996, unless otherwise noted.

§ 1493.400 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Credit Guarantee Program (GSM-103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as defined in § 1493.410(n).

(2) The exporter may assign the right to proceeds under the importer obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the importer obligation.

(3) The SCGP payment guarantee is designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.410(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof, will indicate the form of promissory note required by CCC, and will provide other pertinent information. Exporters may negotiate export sales to importers in that country for one of the commodities specified in the

Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "unallocated" or "undesignated" dollar amount will contain further information on the "unallocated" or "undesignated" portion of the country allocation.

§ 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP will have the following meanings:

(a) *Assignee*. A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC*. The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R*. A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to

qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export*. One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale*. The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances*. Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest*. The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-

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week bill auction in effect at that time.

(h) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of §1493.420.

(j) *FAS/USDA.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *GSM.* The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) *Guaranteed value.* The maximum amount, exclusive of interest, that CCC

agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(m) *Importer.* A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) *Importer obligation.* A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).

(o) *Incoterms.* The following customary terms, as defined by the International Chamber of Commerce, Incoterms® current revision):

(1) Free Alongside Ship (FAS);

(2) Free on Board (FOB);

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and

(4) Cost Insurance and Freight (CIF).

(p) *Intervening purchaser.* A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) *Late interest.* Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) *Notice to participants.* A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(s) *Payment guarantee.* An agreement under which CCC, in consideration of a

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fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by an importer under the importer obligation.

(t) *Port value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity was sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or

CIF sales price in determining the port value.

(u) *Program announcement.* An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) *SCGP.* The Supplier Credit Guarantee Program described by this subpart.

(w) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) *U.S. agricultural commodity.* (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(y) *USDA.* United States Department of Agriculture.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6 1997]

§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the program.

(a) *Submission of documentation.* In order to qualify for participation in the SCGP, an applicant must submit to

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CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

(b) *Previous qualification.* Any exporter that is qualified under subpart B, §1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to §1493.30 will be deemed to also have been provided under this section. Each application must include the statement

required by §1493.430(a)(17) incorporating the certifications of §1493.440, including the certification in §1493.440(e) that the information previously provided pursuant to §1493.420 has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the SCGP if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.430 Application for a payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country;

(2) Name and address of the importer;

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;

(4) Date of sale;

(5) Exporter's sale number;

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(6) Delivery period as agreed between the exporter and the importer;

(7) A full description of the commodity (including packaging, if any);

(8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;

(10) Description and value of discounts and allowances, if any;

(11) Port value (includes upward loading tolerance, if any);

(12) Guaranteed value;

(13) Guarantee fee;

(14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;

(15) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable;

(16) Other information as requested by CCC or specified in Program Announcements and Notices to Participants, as applicable; and

(17) The exporter's statement, "ALL SECTION 1493.440 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.440.

(b) An application for a payment guarantee may be approved as sub-

mitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.450(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

(c) Ineligible exporter. An exporter will be ineligible to obtain a payment guarantee if such exporter:

(1) Directly or indirectly owns or controls the importer;

(2) Is directly or indirectly owned or controlled by the importer; or

(3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

§ 1493.440 Certification requirements for payment guarantee.

By providing the statement in § 1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.430(a)(17), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of

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the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to §1493.420 has not changed, the exporter still meets all of the qualification requirements of §1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§ 1493.450 Payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation, unless CCC determines with respect to the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest

begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (*i.e.*, lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date

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of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.460 Guarantee rates and fees.

(a) *Guarantee fee rates.* The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.470 Evidence of export.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

- (1) Payment guarantee number;
- (2) Date of export;
- (3) Exporter's sale number;
- (4) Exported value;
- (5) Quantity;
- (6) A full description of the commodity exported;
- (7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;
- (8) Description and value of discounts and allowances, if any;
- (9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale was also approved for participation in any of the following CCC or USDA export program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter's statement, "ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in §1493.480.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the program;

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.480 Certification requirements for the evidence of export.

By providing the statement contained in §1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter

breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in §1493.470(a)(10), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by §1493.410(x).

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) There is an importer obligation as defined in §1493.410(n) to cover the exported value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to §1493.420 has not changed, the exporter still meets all of the qualification requirements of §1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

§ 1493.490 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection

with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

- (1) That the agricultural commodity entered the importing country;
- (2) The identification of the export carrier;
- (3) The quantity of the agricultural commodity;
- (4) The kind, type, grade and/or class of the agricultural commodity; and
- (5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.500(b)(4)(ii).)

§ 1493.500 Notice of default and claims for loss.

(a) *Notice of default.* If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

- (1) Payment guarantee number;
- (2) Name of the country;
- (3) Name of the defaulting importer;
- (4) Due date;
- (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
- (6) Date of importer's refusal to pay, if applicable; and
- (7) Reason for importer's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

- (1) Payment guarantee number;
- (2) A certification that the scheduled payment has not been received;
- (3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;
- (4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

- (i) The importer obligation;
- (ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the on-board ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;

(iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of

payment in default under the applicable export sale. The instrument must reference the applicable importer obligation; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.470(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.510 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a) of this part, CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§ 1493.470 and 1493.480, excluding post-export adjustments (*i.e.*, corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.500.

§ 1493.520 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be

allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to §1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

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APPENDIX A TO § 1493.520—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in § 1493.520(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a \$200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of \$100,000 and an interest payment of \$2,500.00 (10% per annum for 90 days on \$100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due (\$60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding (\$1,183.56) (8% per annum for 90 days on \$60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of non-payment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

COMPUTATION OF OBLIGATIONS

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:	
(a) Principal coverage—(60% \$100,000)	\$60,000.00
(b) Interest coverage—(8% per annum for 90 days on \$60,000, basis 365 days)	1,183.56
.....	\$61,183.56
(c) Late interest due from CCC (7% per annum for 11 days on \$61,183.56, basis 365 days)	129.07
(d) Amount paid by CCC on February 22	\$61,312.63

2. Importer's obligation under the importer obligation:

(a) Principal due January 31	\$100,000.00
Interest due January 31 (10% per annum for 90 days on \$100,000, basis 360 days)	2,500.00

Amount owed by importer as of January 31

\$102,500.00

(b) Penalty interest due (12% per annum for 22 days on \$102,500.00, basis 360 days)	751.67
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 (c) Amount owed by importer as of February 22

\$103,251.67

3. Amount of importer's obligation not covered by CCC's payment guarantee: \$41,939.04 (\$103,251.67—\$61,312.63)..

COMPUTATION OF PRO RATA SHARING IN RECOVERY OF LOSSES

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is \$103,251.67, CCC would be entitled to 59.38 percent (\$61,312.63 divided by \$103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent (\$41,939.04 divided by \$103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

§ 1493.530 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(i) Made to one party acting for two or more parties; or

(ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the

agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions

undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by §1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (*i.e.*, requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Word- ing indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information requirements contained in this part (7 CFR part 1493, subpart D) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0037.

PART 1494—EXPORT BONUS PROGRAMS

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Subpart B—Export Enhancement Program Operations

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1494.1200 Program operations.

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SOURCE: 56 FR 25011, June 3, 1991, unless otherwise noted.